85-939

Supreme Court, U.S.
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NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 198_

MICKI ANN RAMIE,
Petitioner

v.

CITY OF HEDWIG VILLAGE,
WILLIAM RUSH,
and
REX WHITE,
Respondents

ON PETITION FOR WRIT OF CERTIORARI
to the
COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Did the Hedwig Village Police violate Micki Ramie's rights to privacy in gender and religion during the course of a sham investigation conducted at the Hedwig Village police headquarters, by repeatedly demanding to know whether Ramie was a man or a woman, by demanding to know whether Ramie believed in Jesus Christ, by telling Ramie to turn to Jesus Christ, and by ordering her to change the gender designation on her Texas driver's license from "female" to "male"?

2. Can the deterrent purpose behind the exclusionary rule be fulfilled by allowing a recovery in tort against the Hedwig Village Police for their improper interrogation of Micki Ramie?

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PETITION FOR WRIT OF CERTIORARI

To The Honorable Supreme Court of the United States:

NOW COMES MICKI RAMIE, Petitioner, and files this Petition for Writ of Certiorari and shows the Court as follows:

OPINION BELOW

The opinion of the Court of Appeals for the Fifth Circuit is published at 765 F.2d 490 and is reproduced in the Appendix.

STATEMENT OF JURISDICTION

1. The Court of Appeals entered its Judgment on July 15, 1985.

2. The Court of Appeals denied Petitioner's Suggestion for Rehearing on August 19, 1985.

3. The statute which confers on the Court jurisdiction to review the judgment by writ of certiorari is 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE

1. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend I.

2. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend IV.

3. The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

U.S. Const. amend. IX.

4. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1.

5. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983.

PRELIMINARY STATEMENT

This case raises the question whether the Constitution prohibits unreasonable governmental intrusion into a person's gender classification and religious beliefs. Furthermore, this case presents the question whether the Constitution allows a police officer to order a female to file an official document reflecting that she is male.

STATEMENT OF THE CASE

1. BASIS FOR FEDERAL JURISDICTION IN THE DISTRICT COURT

The District Court exercised jurisdiction conferred by 28 U.S.C. §§ 1331, 1343, 2201, and 2202.

2. DISPOSITION BELOW

Petitioner brought suit against the City of Hedwig Village, Police Chief Jimmy Jones, Police Lieutenant William Rush, and Police Sergeant Rex White under 42 U.S.C. § 1983 for constitutional rights violations. Jury trial of the case lasted from April 9 to April 13, 1984. At the conclusion of the evidence, Hon. John V. Singleton, Jr., Chief Judge for the Southern District of Texas, directed a verdict in favor of Chief Jones but overruled the City's motion for directed verdict. Neither Lieutenant Rush nor Sergeant White moved for a directed verdict.[1]

The jury found that:

a. Lieutenant Rush violated Petitioner's constitutional rights to privacy in gender and religion;

b. Sergeant White violated Petitioner's constitutional right to privacy in gender;

c. the actions of Rush and White proximately caused injury to Petitioner;

d. neither Rush nor White acted with a good faith belief that their actions were proper;

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1. The Fifth Circuit ruled that Rush and White did move for a directed verdict. *Ramie*, 765 F.2d 490 at 492 n.1.

e. the City, through Chief Jones, violated Petitioner's constitutional right to privacy;

f. the City proximately caused injury to Petitioner;

g. Petitioner was damaged in the amount of $107,000.00;

h. Lieutenant Rush should pay exemplary damages of $5,000.00; and

i. Sergeant White should pay exemplary damages of $10,000.00.

The district court entered judgment in accordance with the verdict and, in addition, awarded Petitioner $35,000.00 in attorney fees and $8,607.85 in expenses.

The City, Lieutenant Rush, and Sergeant White appealed. The Fifth Circuit panel (Judges Reavley, Johnson, and Higginbotham) reversed, holding that Petitioner failed to present evidence of a violation of constitutional rights.

3. STATEMENT OF FACTS

During an interrogation conducted inside the Hedwig Village police station on August 5, 1980, Police Lieutenant Rush and Police Sergeant White repeatedly threatened to send Micki Ramie to prison for claiming to be a woman. (IV, 75-84).[2] Since the interrogation, Micki

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2. References to the record are given in parentheses. Roman numerals indicate the volume number; arabic numerals indicate the page number. There are a total of eight volumes in the record. Volumes four through eight constitute the transcript of the five days of trial proceedings.

References to the exhibits are given as "P.X. ____" for plaintiff's exhibits.

has suffered an acute traumatic neurosis characterized by long-term depression, anxiety, nightmares, loss of self-confidence, and an unreasonable fear of the police. (IV, 87-88; VI, 26; VII, 128). The events which led up to the Ramie interrogation and the filing of this lawsuit deserve a careful retelling.

On Wednesday evening, July 30, 1980, Micki Ramie verbally reprimanded a young boy for shoving grocery carts into the cars in the parking lot behind Ramie's apartment complex.[3] (IV, 74; IV, 86). Micki immediately reported the mischief by telephone to the Hedwig Village Police and to the apartment manager. She left a follow-up note in the manager's office early on July 31. (IV, 65; IV, 86, VII, 45).

On the morning of August 1, the child's mother called the police to complain that "a male dressed as a female" had grabbed the boy and shaken him during an altercation in the parking lot. According to the mother, the incident "had just occurred."[4] (VII, 31; V, 19). Sergeant White took the mother's call and immediately drove to the apartment complex to search for "a short, white male, deep voice, broad shouldered, wearing a vinyl wig" over "side burns and a beard", and dressed in a woman's pantsuit. (V, 18; V, 20; VII, 11).

The description fits Micki Ramie, with one important exception: Micki Ramie is a woman.[5] (V, 209). She

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3. According to the statement signed by the child's mother, the incident occurred on July 27, 1980, four days before she first contacted the Hedwig Village Police. (VII, 15).

4. The mother's complaint to the police was apparently made in retaliation for Micki's report to the apartment manager. (VII, 48).

5. Respondents contested this fact until the first day of trial. (IV, 15-16; IV, 101-02). Up to that point, Respondents took the

suffers from congenital adrenal hyperplasia, also called genital adrenal hyperplasia, adrenogenital hyperplasia, adrenogenital syndrome, or simply AGH. (V, 221; VI, 14). AGH causes an endocrine imbalance which, in turn, causes male secondary sex characteristics (such as facial hair, a deep voice, and balding[6]) to appear in otherwise normal females.[7] (V, 222).

On Sergeant White's first trip to the apartment complex, he established that the "assault" was not the emergency that the mother had described. (V, 32). He learned Micki's identity and knocked on her door, but it was Friday and she was away at work. (V, 34). White waited until the following Monday, August 4, to attempt to contact Micki for the second time. (V, 35). By Tuesday, August 5, he still had not spoken with Micki, so he left a note on her door instructing her to call the police station. (V, 36-37). When she did so, the only information Lieutenant Rush gave her was that she had fifteen minutes to get to the station or he would send a police officer after her. (IV, 67).

Micki arrived at the station and discovered that the lock on the front door was controlled electronically by police personnel inside the building. (IV, 68; V, 54).

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position that Micki was a man or perhaps a hermaphrodite. *See, e.g.*, Deposition of Dr. Harold B. Levy, (V, 224-46) (Counsel for Respondents asking whether Micki's indeterminate gender at birth indicated hermaphroditism (V, 230-31) and whether her surgically altered clitoris "would continue to grow and develop" into a penis (V, 238-39)). Respondents even filed a motion referring to Micki as "he/she."

6. Micki wears a wig because she is partially bald. (V, 87-89).

7. The primary (internal) reproductive organs (ovaries or testicles) determine a person's gender. (V, 237). Micki Ramie has normal ovaries and lacks any testicular or penile tissue. (V, 230-33). She is therefore female.

After she got inside, Rush and White asked for her identification. (IV, 68). She started back to her car to get her billfold, but the officers followed her and searched the interior of the car, the glove box, and the trunk before allowing her to get her driver's license.[8] (IV, 68-69). Then the officers led her back inside the station to a small office, closed the door behind them, and for the first time told Micki why she had been summoned for questioning. (IV, 69-74).

White said that Micki had been accused of posing as an off-duty police officer, carrying a gun, and showing the gun to the unruly child during the July 30 parking lot "assault." (IV, 74-75).[9] The officers would not let Micki give her side of the parking lot incident; they told her "to shut up and just say yes or no." (IV, 75; IV, 77).

At this point, Micki knew that the doors were closed on her and felt that she could not have gotten out of the interrogation room if she wanted to.[10] (IV, 73; IV, 121). She felt dwarfed by the officers (they are taller than she by a foot) and intimidated by their guns. (IV, 84). Officers Rush and White made matters worse by cursing and threatening to send her to "Huntsville Penitentiary" continuously during the course of the interrogation.[11] (IV, 75-77; IV, 81-82; IV, 84).

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8. When Micki asked them whether they had a search warrant, they replied, "We don't need one. We are policemen." (IV, 110).

9. White admitted at trial that no one had accused Micki of showing the gun to the child. (V, 24).

10. The officers kept Micki's car keys and driver's license until they dismissed her. (IV, 85; IV, 87).

11. The Texas Department of Corrections has its headquarters in Huntsville, Texas. Several state prison units are located there.

Rush and White spent a total of three minutes investigating the charges of impersonating an officer, carrying a weapon, and assaulting a child.[12] (IV, 82-84). They spent another hour and ten minutes badgering Micki about her gender, despite the indication on her driver's license that she is female. (IV, 84; IV, 81). White began by asking Micki, "[A]re you a man or a woman?"[13] (IV, 76). Then, White advised Micki Ramie, "You couldn't even be a pimple on one of our officers' asses, let alone an officer of the Hedwig Village Police Department."[14] (IV, 76; V, 74; V, 83). Finally, White asked Micki whether she had "a vagina or a dick." (IV, 77). Micki asked to make a phone call, but the officers told her to shut up. (IV, 77).

Micki told the officers that she has dressed as a woman all of her life because she is a woman. (IV, 77). When White discovered that Micki was born and raised in Louisiana, he remarked, "You mean to tell me that after all of those years that you have been dressing as a woman and none of those red necks jumped on you and beat the shit out of you?" (IV, 79). Rush added, "Then you

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12. At trial, White told the jury that he had been "courteous and lenient" to Micki overall since he had not charged her with any of these alleged offenses. On further examination by the Court, White admitted that there was insufficient evidence to warrant any formal charges against Micki. (V, 107-14).

13. White admitted asking Micki about her gender at least three times. (V, 66-67).

14. White not only admitted making this statement at trial (V, 74-84), but also proudly included it in the written report he filed on the day of the interrogation. (P.X. 12; V, 77) ("I advised Raime [sic], "He wouldn't make a pimple on a police officers [sic] butt—let alone ever be one." ") Lieutenant Rush confirmed the statement at trial (VII, 80-81) and admitted to Judge Singleton that he felt the statement was an indiscretion at the time it was made. (VII, 94-96).

are just a lucky son of a bitch." (IV, 79). Micki attempted to explain her hormone imbalance to the officers, but they interrupted her with "That's what all you freaks and wierdos say." (IV, 79-80). White taunted Micki about being raised by her grandparents: "How about this, Lieutenant, even *its* parents didn't want it. They pushed *it* off on its grandparents." (IV, 80).

White and Rush also threatened to have a female police department employee conduct a strip search to determine whether Micki had male or female genitals.[15] Their search proposal involved two equally evil alternatives. If the search showed that Micki was a man, they would charge Micki with rape of the matron. On the other hand, if Micki proved to be a woman, they would send her to "Huntsville" anyway. (IV, 84).

Micki was scared to death and thought her only way to get away from her tormentors was to say that she was a man. (IV, 82). White promised to let her go if she would admit she was a man dressing as a woman. (IV, 80). She finally told them that she was a man and that she would stop dressing as a woman. (IV, 82). After her admission, the officers ordered her to change the "lie" about her gender on her driver's license. (IV, 80).

At this point, the questioning turned to Micki's religious beliefs. Rush asked her if she believed in Jesus Christ.[16] (IV, 80). When she replied that she did, he asked her whether she knew what Jesus Christ thought of her. (IV, 80). He told her that she was "an abomina-

15. The officers actually forced Micki to remove her wig. (V, 88-90).

16. Rush admitted that he asked this question and that he told Micki "to turn to Jesus for help." (VII, 75).

tion in the eyes of the Lord." (IV, 80). He then warned her,

> Ramie, you better start dressing and acting like the man that God made you to be or we will put you in jail with all the other nuts and let them teach you a lesson. Then you will be glad to act like the man God made you to be. Now you go and buy you some jeans and cowboy boots and cowboy shirts and be the man God made you to be.

(IV, 80-81).

Before the officers released Micki, they gave her one week to "clean up [her] act" and told her they would be watching her. (IV, 82; IV, 92-93). She now lives with the fear that Rush and White will harm her because she filed this suit. (IV, 87-89).

REASONS RELIED ON FOR ALLOWANCE OF WRIT

I. THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH THE RULINGS OF THIS COURT ON PRIVACY RIGHTS.

II. THE DECISION BELOW WILL HAVE THE EFFECT OF MINIMIZING THE AVAILABILITY OF A TORT REMEDY TO REDRESS POLICE MISCONDUCT.

III. THE OFFICERS' CONDUCT CANNOT BE CONDONED BECAUSE IT VIOLATES BASIC PRINCIPLES OF DUE PROCESS.

The Fifth Circuit panel reasoned that:

A. Ramie proved her privacy had been invaded; but

B. Gender and religion do not involve the most intimate aspects of human affairs, so the invasion of Ramie's privacy could not have been a violation of constitutionally protected rights; and

C. If gender and religion *are* among the most intimate aspects of human affairs and are constitutionally protected privacy rights, the slight invasion of Ramie's privacy was outweighed by the government's legitimate interest in conducting a criminal investigation, and no constitutional violation was shown.[17]

Micki Ann Ramie v. City of Hedwig Village, 765 F.2d 490 (5th Cir. 1985).

I. THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH THE RULINGS OF THIS COURT ON PRIVACY RIGHTS.

This Court has not yet specifically held, on the facts presented here, that gender and religion are constitutionally protected areas of privacy, but prior rulings of the Court on privacy rights encompass the personal matters at issue here.

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17. The Fifth Circuit applied the balancing test enunciated in *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981): "An intrusion into the interest in avoiding disclosure of personal information will thus only be upheld when the government demonstrates a legitimate state interest which is found to outweigh the threat to the plaintiff's privacy interest." Since the jury specifically found that Rush and White had not acted in good faith, it is difficult to understand how the appellate panel reached the conclusion, as it must have, that Rush and White were conducting a legitimate criminal investigation. In any event, Petitioner suggests that the Fifth Circuit applied an improper standard to reach its holding. The state should be required to show a *compelling* interest before intrusions of the magnitude present here are justifiable.

A. GENDER

The constitutional privacy protection afforded to decisions about marriage, *Zablocki v. Redhail,* 434 U.S. 374 (1978); *Loving v. Virginia,* 388 U.S. 1 (1967), procreation, *Roe v. Wade,* 410 U.S. 113 (1973); *Doe v. Bolton,* 410 U.S. 179 (1973), and contraception, *Carey v. Population Services International,* 431 U.S. 678 (1977); *Griswold v. Connecticut,* 381 U.S. 479 (1965), necessarily implies that gender is also protected from unwarranted governmental intrusion. Since we do not "allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives," *Griswold,* 381 U.S. at 485-86, we should certainly not allow the police to probe into the nature of our sexual organs.

Again, if the Constitution recognizes a privacy interest in the decisions to marry, to use contraceptives, or to undergo an abortion, there must necessarily be a privacy interest in gender itself. It would be inconsistent to grant protection to procreative choices without also granting protection to the physical attributes which nature bestows to make procreation possible. Finally, it defies logic to postulate that gender is not one of "the most intimate aspects of human affairs." *Ramie,* 765 F.2d at 492. Gender makes possible sexual intimacy, the most physically intimate aspect of all human affairs.

Aside from the right to privacy in marital and procreative decisions, this Court has identified an "individual [privacy] interest in avoiding disclosure of personal matters." *Whalen v. Roe,* 429 U.S. 589, 599 (1977). This right of confidentiality embraces "the right to be free from state inquiry into the contents of [a private

pornography] library," *Stanley v. Georgia,* 394 U.S. 557, 565 (1969), the right to be free from unwarranted governmental inquiry into personal finances, *California Bankers Assoc. v. Shultz,* 416 U.S. 21, 78-79 (1974) (Powell, J. concurring), *id.,* 416 U.S. at 82 (Douglas, J., dissenting), and "the right to be let alone—the most comprehensive of rights and the right most valued by civilized man." *Stanley,* 394 U.S. at 564 (citing *Olmstead v. United States,* 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting)); *see also, Garguil v. Tompkins,* 704 F.2d 661 (2d Cir. 1983), *vacated on other grounds,* 465 U.S. 1016 (1984) (Oakes, J., concurring) (the right to privacy and to bodily integrity are parts of a larger constitutional right of "personhood".) Clearly, gender is a matter more personal than pornographic tastes or banking records. In short, there exists a constitutional "right to be let alone" in the privacy of one's gender.

B. RELIGION

The First Amendment to the Constitution guarantees freedom of religion. This Court has said that "the First Amendment has a penumbra where privacy is protected from governmental intrusion." *Griswold,* 381 U.S. at 483; *see also, Roe v. Wade,* 410 U.S. 113, 152 (1973) (noting that the Court in *Stanley* found the roots of the privacy interest in the First Amendment). The Fifth Circuit has said that "religion is perhaps the quintessentially private matter." *Doe v. Stegall,* 653 F.2d 180, 186 (5th Cir. 1981); *accord, Karr v. Schmidt,* 460 F.2d 609, 615- (5th Cir.), *cert. denied,* 409 U.S. 989 (1972). Clearly, religious beliefs are protected from governmental intrusion.

II. THE DECISION BELOW WILL HAVE THE EFFECT OF MINIMIZING THE AVAILABILITY OF A TORT REMEDY TO REDRESS POLICE MISCONDUCT.

III. THE OFFICERS' CONDUCT CANNOT BE CONDONED BECAUSE IT VIOLATES BASIC PRINCIPLES OF DUE PROCESS.

"The most basic function of any government [is] to provide for the security of the individual and his property." *Illinois v. Gates*, 462 U.S. 213, 237 (1983). For more than a decade, this Court has been struggling with a rational method of fulfilling this basic function while still honoring the Fourth Amendment's prohibition against illegal searches. The Court in its "balanced judgment" has concluded that absolute application of the exclusionary rule should be abandoned in favor of a determination which would allow into evidence the fruits of an improper but good faith search. *Id.* at 241.

Early in the analysis of the "good faith exception," it was suggested that it was more appropriate to punish the offending officer than to allow both the guilty officer and the guilty defendant to go free. *Schneckloth v. Bustamonte*, 412 U.S. 218, 268 n.26 (1973) (Powell, J., joined by Burger, C.J., and Rehnquist, J., concurring). Courts could solve the improper search dilemma by allowing a tort remedy against the offending police officer as a deterrent from future improper searches. A "tort remedy would give the courts an occasion to rule on the content of constitutional rights . . . and it would provide the real consequence needed to give credibility to the guaranty." *Id.* (citing Oaks, *Studying the Exclusionary Rule on Search and Seizure*, 37 U. Chi. L. Rev. 655,

756-57 (1970); *see also, Stone v. Powell,* 428 U.S. 465, 501 (1976) (Burger, C.J., concurring).

It is clear in this case that the government did not keep Micki Ramie secure in her person. Instead, its minions, under color of law, harassed and abused her. She was guilty of no crime, but the officers were guilty of official oppression. Here, then, is the case where the constitutional rights of the individual can be protected by providing a tort remedy that will deter similar incidents in the future.

The time has passed when the rights of the guilty exceed the rights of the innocent. Mr. Justice Frankfurter's words of three decades ago ring true in this case:

> Due process of law, as a historic and generative principle, precludes defining, and thereby confining, these standards of conduct more precisely than to say that convictions cannot be brought about by methods that offend 'a sense of justice.'
>
> So here, to sanction the brutal conduct which naturally enough was condemned by the court whose judgment is before us, would be to afford brutality the cloak of law. Nothing would be more calculated to discredit law and thereby to brutalize the temper of a society.

Rochin v. California, 342 U.S. 165, 173 (1952).

CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner respectfully requests the Court to grant her Petition for Writ of Certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that three true and correct copies of this Petition for Writ of Certiorari have been served by certified mail, return receipt requested, on each of the following persons:

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No 84-2323

MICKI ANN RAMIE,
Plaintiff-Appellee,

versus

THE CITY OF HEDWIG VILLAGE, TEXAS, ET AL.,
Defendants-Appellants.

Appeal from the United States District Court for the
Southern District of Texas

ON SUGGESTION FOR REHEARING EN BANC

(Opinion 7-15-85, 5 Cir., 198__, ____F.2d____)

(August 19, 1985)

Before REAVLEY, JOHNSON and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:

Treating the suggestion for rehearing en banc as a petition for panel rehearing, it is ordered that the petition for panel rehearing is DENIED. No member of the panel nor Judge in regular active service of this Court having requested that the Court be polled on rehearing en banc

(Federal Rules of Appellate Procedure and Local Rule 35), the suggestion for Rehearing En Banc is DENIED.

* * *

ENTERED FOR THE COURT:

/s/ THOMAS M. REAVLEY
United States Circuit Judge

APPENDIX B

Micki Ann RAMIE,
Plaintiff-Appellee,

v.

CITY OF HEDWIG VILLAGE, TEXAS, et al.,
Defendants-Appellants.

No. 84-2323.

United States Court of Appeals,
Fifth Circuit.

July 15, 1985.

Civil rights action was brought against city and police officers alleging violation of plaintiff's constitutional right to privacy. The United States District Court for the Southern District of Texas, John V. Singleton, Jr., Chief Judge, directed a verdict in favor of one defendant, and awarded judgment on jury verdict in favor of plaintiff, and city and two police defendants appealed. The Court of Appeals, Reavley, Circuit Judge, held that government's interest in conducting criminal investigations outweighed any invasion of plaintiff's privacy and therefore plaintiff failed to present evidence that her constitutional rights were violated by police questioning about her gender and religious beliefs; furthermore, allegedly abusive manner in which the questions were asked did not amount to an unconstitutional invasion of privacy.

Reversed.

Appeals from the United States District Court for the Southern District of Texas.

Before REAVLEY, JOHNSON and HIGGINBOTHAM, Circuit Judges.

REAVLEY, Circuit Judge:

Micki Ann Ramie brought a civil rights action, 42 U.S.C. § 1983 (1982), against the City of Hedwig Village, Rex White, William Rush, and Jimmy Jones for violating her constitutional right to privacy. After the district court directed a verdict in favor of Jones, the jury awarded Ramie $122,000, and the district court awarded her $43,607.85 for attorney's fees and costs, *see* 42 U.S.C. § 1988 (1982). The City, White, and Rush appeal. Holding that no constitutional right was violated, we reverse.

White, a sergeant on the City's police force, received a complaint from a citizen that a man dressed as a woman, representing himself as an undercover city police officer, had assaulted her son. White's investigation led him to Ramie. Ramie, a female, suffers from congenital adrenal hyperplasa, a condition that causes her to overproduce male hormones, giving her certain male secondary sex characteristics such as a deep voice and facial hair.

At the request of White, Ramie voluntarily appeared at the police headquarters for questioning. What occurred during the questioning was hotly contested at trial. According to Ramie, the questioning lasted approximately an hour and fifteen minutes, during which White and Rush repeatedly questioned and harassed her about her gender, threatened to send her to the penitentiary if she did not admit she was a man and act and dress accord-

ingly, and asked whether she believed in Jesus Christ. According to White and Rush, the questioning lasted about twenty minutes. During the interview, they questioned Ramie about her sex to determine her identity and inquired about her religious beliefs only after she had indicated that her present lifestyle bothered her. White and Rush, although with hindsight they confessed that they may have committed some indiscretions, denied that they threatened or harassed Ramie.

On appeal, the City, White, and Rush first argue that there was no evidence to support a finding that Ramie's constitutional right to privacy was violated.[1] Ramie argues that evidence of White and Rush questioning her about her gender and religious beliefs supported the jury's finding.

[1, 2] The Constitution protects individuals against invasion of their privacy by the government. *See Whalen v. Roe,* 429 U.S. 589, 598-602, 97 S. Ct. 869, 876-78, 51 L.Ed.2d 64 (1977); *Fadjo v. Coon,* 633 F.2d 1172, 1175-77 (5th Cir. 1981); *DuPlantier v. United States,* 606 F.2d 654, 669-71 (5th Cir. 1979), *cert. denied,* 449 U.S. 1076, 101 S. Ct. 854, 66 L.Ed.2d 798 (1981); *Plante v. Gonzales,* 575 F.2d 1119, 1132 (5th Cir. 1978), *cert. denied,* 439 U.S. 1129, 99 S. Ct. 1047, 59 L.Ed.2d 90 (1979). The liberty interest in privacy encompasses two notions: the freedom from being required to disclose

1. Ramie argues that White and Rush waived any claim of insufficiency of the evidence by failing to move for a directed verdict at the close of all the evidence. *See Wells v. Hico Indep. School Dist.,* 736 F.2d 243, 248-49 (5th Cir. 1984), *petition for cert. filed,* 53 U.S.L.W. 3302 (U.S. October 23, 1984) (No. 84-545). The record clearly shows, however, that all defendants moved for a directed verdict on the grounds that there was no evidence of a constitutional violation.

personal matters to the government and the freedom to make certain kinds of decisions without government interference. *Whalen,* 429 U.S. at 599-600, 97 S. Ct. at 876, 51 L.Ed.2d at 73. The disclosure strand of the privacy interest in turn includes the right to be free from the government disclosing private facts about its citizens and from the government inquiring into matters in which it does not have a legitimate and proper concern. *Id.* at 600-02, 97 S. Ct. at 877-78, 51 L.Ed.2d at 73. There was no evidence that either police officer or the City disclosed any information obtained during the questioning. Therefore, Ramie's claim is that the asking of the questions about her gender and religious beliefs constituted a violation of her constitutional right to privacy.

[3] To determine whether the questioning amounted to a violation of Ramie's right to privacy, this court must decide whether the invasion of privacy proved by Ramie outweighs the government's legitimate interests. *See id.,* 97 S. Ct. at 877-78, 51 L.Ed.2d at 74; *Fadjo,* 633 F.2d at 1176. In *McNally v. Pulitzer Publishing Co.,* 532 F.2d 69, 76-77 (8th Cir.), *cert. denied,* 429 U.S. 855, 97 S. Ct. 150, 50 L.Ed.2d 131 (1976), the court stated that the constitution is violated only by invasions of privacy involving the most intimate aspects of human affairs. For example, in *Whalen,* 429 U.S. at 602, 97 S. Ct. at 878, 51 L.Ed.2d at 75, the Court held that requiring the disclosure of persons receiving medications to state health agencies did not amount to an impermissible invasion of privacy, especially where there is regular disclosure of similar information to doctors, hospital personnel, and public health agencies. Gender and religious beliefs are generally not such intimate matters and are subject to public exposure. Ramie's license, which she showed to

White and Rush, indicated her gender. Furthermore, Ramie introduced evidence at trial that she regularly attended church. Weighed against this slight invasion of privacy stands the City's legitimate interest in questioning persons suspected of committing crimes. Although in retrospect some question may be determined to be irrelevant and not within the government's proper sphere of concern, police officers must have the freedom at least to ask the questions they believe will aid them in the investigation. Because we hold that the government's interest in conducting criminal investigations outweighs any invasion of Ramie's privacy, Ramie failed to present evidence that her constitutional rights were violated.

An undercurrent running through this case, both at trial and on appeal, is that White's and Rush's *manner* in asking the questions violated her constitutional right to privacy. Ramie, however, cites no case to support the proposition that asking otherwise proper questions in an abusive and harassing manner amounts to an unconstitutional invasion of privacy. That abusive and harassing police questioning does not violate the constitutional right to privacy does not mean that persons so treated are without legal rights. Confessions obtained through coercive tactics are, of course, inadmissible. State tort remedies may also be available.

Because we hold that Ramie failed to prove that her constitutional right to privacy was invaded, we reverse and need not reach the remaining issues raised by the City, White, and Rush. Because there was considerable confusion at trial as to what is required to establish municipal liability under section 1983, however, we address that matter briefly.

In *Monell v. Department of Social Services,* 436 U.S. 658, 98 S. Ct. 2018, 56 L.Ed.2d 611 (1978), the Court held that local governments are liable under section 1983 where official policy or governmental custom is responsible for a deprivation of rights protected by the constitution. In *Bennett v. City of Slidell,* 728 F.2d 762, 770 (5th Cir. 1984), *petition for cert. filed,* 53 U.S.L.W. 3419 (U.S. Dec. 4, 1984) (No. 84-797), this court noted that to establish liability based on the existence of a policy, *Monell* requires that the policy complained of must itself, as opposed to the way it is carried out by city employees, deprive a plaintiff of a constitutional right. *See, e.g., Monell,* 436 U.S. at 661-62, 98 S. Ct. at 2020-21, 56 L.Ed.2d at 617 (City of New York maintained policy which unconstitutionally compelled pregnant employees to take unpaid leaves of absence before required for medical reasons). The *Bennett* court also discussed municipal liability based on custom. The court stated that a section 1983 plaintiff could establish custom by proving that constitutionally objectionable behavior was sufficient in duration or frequency to the extent that it was acceded to by the maker of official policy. 728 F.2d at 766, 768.

[4] The latest writing by the Supreme Court is *City of Oklahoma City v. Tuttle,* ____U.S.____, 105 S. Ct. 2427, 85 L.Ed.2d ____ (1985). The plurality opinion authored by Justice Rehnquist would require that the damaging incident be "caused by an existing, *unconstitutional* municipal policy. . . ." ____ U.S. at ____, 105 S. Ct. at 2436 (emphasis added). Justice Brennan expressed a different view of the causal connection required between municipal policy and the constitutional deprivation: "[A] plaintiff must prove, in the broad causal

language of the statute, that a policy or custom of the city 'subjected' him, or 'caused him to be subjected' to the deprivation of constitutional rights." ____ U.S. at ____, 105 S. Ct. at 2439. However, both opinions reject the contention that a single incident of police misbehavior can establish a municipal policy or custom. Any abusive aspect of the interrogation of Ramie would not, therefore, alone prove an objectionable city policy.

To establish the City's liability, Ramie proved only her own interrogation and elicited testimony from Jones, the police chief, that it was within the police force's policy to ask suspects their gender and that, although there was no policy on discussing religion with suspects, he saw nothing wrong with White and Rush bringing up the subject. Ramie also introduced evidence of a civil rights judgment rendered against White for false imprisonment and cruel and unusual punishment.

[5] Under *City of Oklahoma City* and *Monell*, the above evidence was insufficient to establish the City's liability. Assuming that the police chief was delegated policy-making authority, there was no policy or custom attributable to him that was at all objectionable. Isolated events are not sufficient to establish custom. The testimony of a city official might display a culpable attitude or an approval of unconstitutional conduct, but the testimony could not prove a policy by "ratification"—as has been argued here.

Because Ramie failed to introduce sufficient evidence to prove a violation of her right to privacy, the judgment is REVERSED.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

C.A. NO. H-80-2098

MICKI ANN RAMIE

v.

THE CITY OF HEDWIG VILLAGE, TEXAS, ET AL

JUDGMENT

This action came on for trial before the Court and a jury, and the issues having been duly tried and the jury having duly rendered its verdict,

It is ORDERED, ADJUDGED, and DECREED:

1. That the Plaintiff take nothing of Defendant Jimmy Jones in his individual capacity, and that Defendant Jones recover of Plaintiff his costs of action;

2. That Micki Ann Ramie recover of Defendants the City of Hedwig Village, Sgt. Rex White, and Lt. William George Rush, jointly and severally, the sum of One Hundred Seven Thousand and No/100ths Dollars ($107,-000.00), with interest thereon at the rate of 10.81 percent per annum as provided by law;

3(a). That Micki Ann Ramie recover of Defendant William George Rush the sum of Five Thousand and No/100ths Dollars ($5,000.00), with interest thereon at the rate of 10.81 percent per annum as provided by law;

3(b). That Micki Ann Ramie recover of Defendant Sgt. Rex White the sum of Ten Thousand and No/100ths Dollars ($10,000.00), with interest thereon at the rate of 10.81 percent per annum as provided by law;

4. That Plaintiff recover of Defendants the City of Hedwig Village, Sgt. Rex White and Lt. William George Rush, jointly and severally, her costs of action.

ENTERED this ____ day of _____, 1984.

_____
JOHN SINGLETON
United States District Judge

APPROVED AS TO FORM:

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Supreme Court, U.S.
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DEC 18 1985
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CLERK

NO. 85-939

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

MICKI ANN RAMIE,
Petitioner

v.

CITY OF HEDWIG VILLAGE,
WILLIAM RUSH and REX WHITE,
Respondents

ON PETITION FOR WRIT OF CERTIORARI
to the
COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Petitioner's first question, of the two under "Questions Presented for Review," is inaccurate in (1) referring to Defendants' investigation as "a sham" (2) characterizing what even Plaintiff (the Petitioner) concedes were no more than three questions regarding gender as repeated demands (3) characterizing a question whether Plaintiff is a Christian, freely and promptly answered by Plaintiff in the affirmative, as a demand made upon Plaintiff, and (4) failing to mention that the statement to Plaintiff to identify herself on her Texas driver's license as a man came after she, by her own admission, stated to Defendants that she is a man.

The second of Plaintiff's two "Questions Presented for Review" might foster the mistaken impression that the exclusionary rule is in any way involved in this case, when in fact no physical evidence was ever seized while investigating Plaintiff for assault on a child, carrying a concealed weapon, and impersonating a police officer. Further, the question is raised for the first time at this stage of the proceedings and should therefore not be considered, to the extent it invites this Court to create a new legal remedy for the purpose of deterrence.

Plaintiff's rephrasing of her first question, in her "Preliminary Statement" likewise does not state any issue this Court has to consider. The record will reflect a maximum of three questions to Plaintiff regarding her gender, one inquiry whether she is a Christian, and one suggestion that (since she is) she "turn to Jesus Christ" for comfort with her personal problems. The only questions this Court has to decide are whether these facts

present any basis for even considering an expansion of the constitutional right of privacy identified in the *Griswold v. Connecticut* line of cases, to embrace gender identity and religious affiliation; and if so, whether such an expansion should be announced.

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CITY OF HEDWIG VILLAGE,
WILLIAM RUSH and REX WHITE,
Respondents

ON PETITION FOR WRIT OF CERTIORARI to the COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

To The Honorable Supreme Court of the United States:

COMES NOW THE CITY OF HEDWIG VILLAGE, Respondent (Defendant below), and would show the Court as follows regarding Plaintiff's Petition for Writ of Certiorari:

OPINION BELOW

The opinion of the Court of Appeals for the Fifth Circuit, published at 765 F.2d 490, is reproduced in the Appendix of this brief for ease of reference.

STATEMENT OF THE CASE

Disposition Below

Plaintiff accurately states the disposition of this case in the court of appeals, as far as she goes. It should be noted, however, that Defendants, in their respective appellant's briefs to the court of appeals, each raised six points of error, but the court of appeals only found it necessary to address the argument that there is no evidence to support the finding of a constitutional privacy violation. There would therefore remain for disposition by the court of appeals, even in the event of a ruling by this Court for Plaintiff on the privacy issue, distinct appeal points relating to municipal liability, evidentiary rulings, and the damages awarded.

Statement of Facts

Plaintiff has offered this Court a "Statement of Facts" six pages in length, reciting Plaintiff's version of events without even a hint that it was vigorously disputed at trial, and without mention of several facts crucial to an understanding of Defendants' investigation. Defendant City of Hedwig Village discusses some of the omitted facts below, since Plaintiff's Petition for a Writ of Certiorari is essentially a plea to this Court to declare a new "strand" of the right of privacy, prompted by Plaintiff's description of a seemingly outrageous offense.

Plaintiff's statement of facts does concede one extremely important point: that Plaintiff met the description of the suspect defendant police officers were looking looking for: "A short, white male, deep voice, broad shouldered, wearing a vinyl wig" over "sideburns and a beard," and dressed in a woman's pantsuit. Plaintiff stresses to this Court that the description is inaccurate, as it is, since Plaintiff is a woman. Defendant White, however, was uncertain of Plaintiff's gender even during his questioning of her. (V, 58-59, 63-66) (All record references are to volume and page numbers). Plaintiff had been identified by the apartment manager (a woman) as "a he/she." (V, 20-21). Plaintiff's appearance at the police station matched that given by the complaining witness closely enough that Sergeant White believed her to be a man. (V, 32, 71). Lieutenant Rush also believed Micki Ramie to be a man. (VII, 80). Plaintiff's own psychiatrist testified that he could readily understand how a person could take Micki Ramie for a man. (VI, 86).

The discussion about gender ensued when Plaintiff displayed a Texas driver's license identifying her as a woman (V, 58), although she had been identified as and appeared to be a man. Chief of Police James Jones testified that an officer who is unsure of a suspect's gender, based on personal observation, need not simply take the suspect's word for it. (VII, 181). Beard growth, an obvious wig, and a male-sounding voice are cause for questioning a suspect's claim to be female. (VII, 182). It is not good police work to simply accept a suspect's word for something, even his own gender, when direct observation by the officer involved raises doubts as to the accuracy of the information being given by the suspect. (VII, 181). When such circumstances suggest

that a suspect may, for whatever reason, be lying about his gender, Chief Jones testified that more than one question regarding gender would certainly be appropriate. (VII, 181).

Plaintiff herself raised the subject of her unhappy childhood, with problems relating to gender identity. (V, 72-73). Lt. Rush, in an effort at compassion which he no doubt has since come to regret, then verified that Plaintiff is a Christian before suggesting that she turn to Jesus Christ. (VII, 70-71). Plaintiff adds a claim that the same person who suggested she to turn to Jesus Christ also called her "an abomination in the eyes of the Lord," and rests on the suggestion and the alleged insult in arguing that Defendant Rush and his employer violated a right to privacy in religion.

Defendant will not attempt to rebut or put in context, through additional record references, the other portions of Plaintiff's statement of facts, since the foregoing is all that needs to be stated in connection with the two questions Plaintiff presents for review.

SUMMARY OF ARGUMENT

Petitioner would have this Court grant a writ of certiorari based upon an asserted intrusion into her gender classification and religious beliefs. Granting her the relief she asks would require creation of an entirely new "strand" of the constitutional right to privacy. That right has come to embrace the individual's interest in avoiding disclosure of certain personal matters, and in retaining his independence in making certain kinds of important decisions. Micki Ramie's gender identity cannot reasonably be considered a matter which is private,

and which she is not required to disclose to the police in the course of an investigation in which she has been named by the complaining witness as a person who assaulted a child and impersonated a police officer. Plaintiff certainly did not have to disclose her religious affiliation to anyone, but she freely did so, without protest, when asked about it. Plaintiff can hardy dare claim that a constitutional right to keep her religious affiliation private (assuming *arguendo* that such a right exists) is violated by merely asking whether she is a Christian, with no hint of compulsion by the questioner and no sign of reluctance to answer by the Plaintiff.

Plaintiff, by referring to Defendants' "intrusion" upon her privacy, evidently means to say that Defendants interfered with her right to make certain constitutionally protected decisions. The first of her questions presented for review is not explicit about whether the advice to turn to religion and the instruction to correctly reflect her gender on her driver's license supposedly violate a constitutional interest in making the decisions involved, or whether they constitute grounds for the creation of a new "strand" of the constitutional right of privacy. However much a departure from normal work it may have been for Defendant Rush to counsel Plaintiff to turn to Jesus Christ, after ascertaining her Christianity, that advice cannot possibly be twisted enough to make it appear even an attempt to interfere with Plaintiff's religious choice. This would be true even it Lt. Rush had not first verified Plaintiff's Christianity, knew instead that she is not a Christian, and barked his advice at her like a drill sergeant.

Plaintiff was indeed told to correct her driver's license so that it would properly reflect her gender as male,

but Plaintiff's petition to this Court glosses over the fact that this statement by Defendant White followed Plaintiff's statement to Sgt. White and Lt. Rush that she is male. Plaintiff admitted making this statement to the defendant officers. (V, 72-73). Defendants, far from interfering with Plaintiff's identification of herself as male or female, *asked* her about her gender, and did not instruct her to identify herself as a man on her Texas driver's license until she stated herself to be a man. The focus of the petition for certiorari upon conduct which would, at worst, (accepting all of Plaintiff's allegations) amount to rudeness, reflects the very insubstantial nature of the federal question brought to this Court. The constitutional right of privacy may await further definition by this Court, but its expansion to embrace gender and religion is hardly justified by a case in which disclosure of gender identity is at stake on one hand, and a single religious question and piece of advice is complained of on the other.

ARGUMENT

I. The court of appeals properly refused to announce, given this record, a never-before identified right of privacy in (1) gender identity and (2) religious affiliation.

(A) Gender Identity

Plaintiff concedes, as she must, that there is no precedent for her argument that gender and religion are constitutionally protected areas of privacy. (Petition, p. 12). She instead argues that this Court's protection of decisions regarding marriage, procreation, and contraception, in *Griswold v. Connecticut*, 381 U.S. 479 (1965) and later

decisions, necessarily "protects" her against repeated questions regarding her gender. It is ironic that Plaintiff can raise this as an issue only because her gender was *not* obvious to the defendant police officers and to a complaining witness, all of whom took her to be a man rather than a woman. Since gender is almost always obvious to any observer, this Court would open a Pandora's box of litigation to hold, as Plaintiff urges, that there is a privacy interest of constitutional dimension in gender identity.

Griswold v. Connecticut and this Court's subsequent privacy decisions all protect privacy in choice. Plaintiff urges this Court to treat a privacy interest in an ordinarily obvious physical attribute as it has privacy interests in choices people make about the most intimate aspects of their lives. Gender does make possible very intimate and private activities, and is vastly more important than the "pornographic tastes or banking records" Plaintiff refers to (Petition, p. 14), but it is much less private, and not, in itself, intimate.

Katz v. United States, 389 U.S. 347, 350 (1967) states a principle long recognized by this Court and central to the privacy issue raised by Plaintiff: that "the protection of a person's *general* right to privacy—his right to be let alone by other people—is . . . left largely to the law of the individual states." This Court put the matter even more strongly in rejecting another petitioner's claim to a broader protection than is granted by 42 U.S.C. § 1983, in *Paul v. Davis,* 424 U.S. 693, 700 (1976):

> "Violation of local law does not necessarily mean that federal rights have been invaded. The fact that

> a prisoner is assaulted, injured, or even murdered by state officials does not necessarily mean that he is deprived of any right protected or secured by the Constitution or laws of the United States."

The court went on to say, in *Paul,* that the identification of Plaintiff Davis as an active shoplifter, in a circular distributed to merchants prior to dismissal of the shoplifting charges against him, left him with a "right of privacy" action that "is far afield from [the] line of decisions" by this Court defining the scope of that constitutional tort. *Id.* at 713. Micki Ramie's claim is equally far afield. *Whalen v. Roe,* 429 U.S. 589 (1977) protects plaintiff's interest in avoiding disclosure of certain personal matters, but defendant's briefing below, and the decision of the court of appeals, well demonstrates why Micki Ramie's gender could not be closed for discussion during a police investigation. The same decision acknowledges Plaintiff's interest in independence in making certain kinds of important decisions, but a citizen's decision to misstate his gender on his driver's license can hardly be one he is free to make independently, or one which is "important," as this Court used the word. *Id.* at 599-600. Reasonable regulation of the exercise of even the most fundamental rights—such as marriage—is constitutionally permitted. *Zablocki v. Redhail,* 434 U.S. 374 (1978). If Defendants, knowing Plaintiff to be a woman, had coerced her into identifying herself on her driver's license as a man, Plaintiff would have a strong argument before this Court. The record citations above, however, demonstrate clearly that Sgt. White told but never coerced Micki Ramie to identify herself as male on her driver's license because she appeared to be male, and because she had just stated she is male.

The opinion of the court of appeals, based on a careful examination of the entire record at trial, shows a weighing of the claimed privacy interest against the Defendants' "legitimate interest in questioning persons suspected of committing crimes." (Appendix, p. 5). The court squarely addressed the essence of Plaintiff's claim: that the *manner* in which Defendants Rush and White spoke to her was so offensive that it had to violate some right, which Plaintiff decided was her constitutional right to privacy. Without explicitly ruling on the existence of the alleged constitutional privacy interest in gender and religion, the court of appeals found no evidence of any privacy violation. The court, addressing Plaintiff's claim that only a constitutional tort action could vindicate her rights, observed that "state tort remedies may also be available." (Appendix, p. 5).

Plaintiff's counsel made the tactical decision to refrain from asserting the invasion of privacy action which is judicially recognized under Texas law, which would not have imposed upon Plaintiff the burden of charting new law, with intemperate language her only argument for doing so. (*see* Hedwig Village's Reply Brief below, at p. 15). Federal civil rights law affords advantages of attorney fee and costs recovery, while Texas tort actions open to Plaintiff would not only have lacked those advantages, but would have presented no avenue for recovery against the City of Hedwig Village, protected by sovereign immunity under Texas law. A sensible plaintiff's attorney would anticipate collecting at least a part of a judgment against a municipality, but not much of one against an individual police officer. Plaintiff's § 1983 lawsuit and appearance before this Court is explained by a gamble to obtain a collectible judgment, in preference

to pursuing a judgment that (if obtained) would stand up under state tort law, but offer much less hope for collection. There is no substantial federal question here, and barely the facade of one.

(B) Religious Affiliation

Plaintiff, in support of her claim that her right of privacy in religion was violated, offers no closer guidance than a decision noting the very private nature of religion. That religious belief is private, and protected against governmental intrusion, does not argue against the decision reached by the court of appeals. No part of the record suggests that Defendants interfered with or intruded upon Plaintiff's holding of or exercise of any religious beliefs. Before suggesting that Plaintiff turn to Jesus Christ for help, Lt. Rush took care to verify that Plaintiff is a Christian. (VII, 70-71). Plaintiff freely stated her religious belief when asked, so that even granting the impertinence of the question, it hardly amounts to "governmental intrusion."[1] The only U. S. Court of Appeals to have considered this issue held that an inquiry about religion does not violate the First Amendment. *Lujan v. United States,* 209 F.2d 190 (10th Cir. 1953).

Granting for the sake of argument that the same Lt. Rush who advised Plaintiff to turn to Jesus Christ for comfort would also tell her she is "an abomination in the eyes of the Lord," such an insult cannot reasonably be construed as an invasion of Plaintiff's religious privacy.

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1. A plausible basis for writing religion into the group of fundamental liberties to which there attaches a privacy interest *might* be presented if any of Defendants had attempted to force Plaintiff to profess or practice particular religious dogma, but such an act is nowhere to be found in the record.

It demands no information from her, and tells her nothing about how she must profess or practice her religion. If made, it would simply be a rude and inappropriate remark, as opposed to a constitutional violation.

II. The decision of the court of appeals leaves in place all tort remedies to redress police misconduct.

Plaintiff's second argument for a writ of certiorari can be reduced to the proposition that a decision declining to add to existing rights has the effect of minimizing existing rights. Plaintiff admits and her petition reflects a lack of authority for her constitutional privacy argument; yet she is pleading for the birth of her tort remedy while claiming at the same time that it has been "minimized." The decision of the court of appeals not only leaves unaffected, but specifically refers Plaintiff to, tort remedies under state law. (Appendix, p. 5). Plaintiff's real problem with the decision of the court of appeals is not its restriction of her tort remedy, but rather its denial of recovery to her, based upon the record.

The court of appeals took Plaintiff's privacy claim seriously enough, notwithstanding the lack of precedent, to explicitly weigh the asserted invasion of privacy against the legitimate investigative need for gender information. (Appendix, p. 4). The court of appeals did treat plaintiff's claim as though the asserted invasion of privacy tort might embrace gender and religion; the court simply found no evidence establishing a constitutional violation in this record. This Court need not hear this petition in order to redress any unduly restrictive reading of its privacy rulings, for quite the contrary occurred below.

III. Accepting *arguendo* all allegations of rudeness and impropriety, Plaintiff has not shown any violation of constitutional scope.

It does not diminish the importance of due process to note that the last refuge of a petitioner whose factual and legal arguments have been exhausted is frequently the claim that his adversary's conduct violated the principles of due process. So it is with Plaintiff's third reason for allowance of a writ. No argument is offered to show how any of the lines of due process decisions affords Plaintiff a cause of action for offensive language. Circuit rulings are to the contrary. *Collins v. Cundy,* 603 F.2d 825 (10th Cir. 1979); *Miner v. Brackney,* 719 F.2d 954 (8th Cir. 1983); *see also Johnson v. Glick,* 481 F.2d 1028 (2nd Cir. 1983). Plaintiff closes most inappropriately with an excerpt from *Rochin v. California,* 342 U.S. 165, 173 (1952), likening by implication "the brutal conduct which naturally enough was condemned by the court" in *Rochin* to several alleged insulting statements made by police officers in the course of an investigation in which Plaintiff was, by her own admission, never touched. (IV, 121-122).

Community expectations regarding politeness by lawmen readily explain why an average jury, given the chance, might return a plaintiff's verdict under the circumstances presented in the district court. It is the task of judges to interpose the requirements of the law between a claim for damages and the freedom of a jury to award the claimant those damages. The district court failed to do so, but the court of appeals performed its function as it should, not even having to go beyond this defendant's first appeal point in order to determine

the insupportability of the verdict. Micki Ramie's Petition for a Writ of Certiorari is the third in her line of pleas that she get and keep a verdict, "regardless of whether any particular constitutional rights were violated" by Defendants. (Appellee's brief, p. 15). Although she wisely couches her petition to this Court in reliance on the Constitution upon which her verdict rests, Plaintiff's argument remains one to ignore applicable precedent, or change it, in order to punish allegedly outrageous (verbal) conduct. That plea is properly directed to the state of Texas.

CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, Respondent City of Hedwig Village prays that the Petition for Writ of Certiorari be denied for failure to present a substantial federal question.

Respectfully submitted,

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& SHEINESS

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CERTIFICATE OF SERVICE

This is to certify that three (3) true and correct copies of this response to Petition for Writ of Certiorari have been delivered by certified mail, return receipt requested, to the following counsel of record:

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APPENDIX

Micki Ann RAMIE,
Plaintiff-Appellee,

v.

CITY OF HEDWIG VILLAGE, TEXAS, et al.,
Defendants-Appellants.

No. 84-2323.

United States Court of Appeals,
Fifth Circuit.

July 15, 1985.

Civil rights action was brought against city and police officers alleging violation of plaintiff's constitutional right to privacy. The United States District Court for the Southern District of Texas, John V. Singleton, Jr., Chief Judge, directed a verdict in favor of one defendant, and awarded judgment on jury verdict in favor of plaintiff, and city and two police defendants appealed. The Court of Appeals, Reavley, Circuit Judge, held that government's interest in conducting criminal investigations outweighed any invasion of plaintiff's privacy and therefore plaintiff failed to present evidence that her constitutional rights were violated by police questioning about her gender and religious beliefs; furthermore, allegedly abusive manner in which the questions were asked did not amount to an unconstitutional invasion of privacy.

Reversed.

Appeals from the United States District Court for the Southern District of Texas.

Before REAVLEY, JOHNSON and HIGGINBOTHAM, Circuit Judges.

REAVLEY, Circuit Judge:

Micki Ann Ramie brought a civil rights action, 42 U.S.C. § 1983 (1982), against the City of Hedwig Village, Rex White, William Rush, and Jimmy Jones for violating her constitutional right to privacy. After the district court directed a verdict in favor of Jones, the jury awarded Ramie $122,000, and the district court awarded her $43,607.85 for attorney's fees and costs, *see* 42 U.S.C. § 1988 (1982). The City, White, and Rush appeal. Holding that no constitutional right was violated, we reverse.

White, a sergeant on the City's police force, received a complaint from a citizen that a man dressed as a woman, representing himself as an undercover city police officer, had assaulted her son. White's investigation led him to Ramie. Ramie, a female, suffers from congenital adrenal hyperplasa, a condition that causes her to overproduce male hormones, giving her certain male secondary sex characteristics such as a deep voice and facial hair.

At the request of White, Ramie voluntarily appeared at the police headquarters for questioning. What occurred during the questioning was hotly contested at trial. According to Ramie, the questioning lasted approximately an hour and fifteen minutes, during which White and Rush repeatedly questioned and harassed her about her gender, threatened to send her to the penitentiary if she did not admit she was a man and act and dress accord-

ingly, and asked whether she believed in Jesus Christ. According to White and Rush, the questioning lasted about twenty minutes. During the interview, they questioned Ramie about her sex to determine her identity and inquired about her religious beliefs only after she had indicated that her present lifestye bothered her. Whtie and Rush, although with hindsight they confessed that they may have committed some indiscretions, denied that they threatened or harassed Ramie.

On appeal, the City, White, and Rush first argue that there was no evidence to support a finding that Ramie's constitutional right to privacy was violated.[1] Ramie argues that evidence of White and Rush questioning her about her gender and religious beliefs supported the jury's finding.

[1, 2] The Constitution protects individuals against invasion of their privacy by the government. *See Whalen v. Roe*, 429 U.S. 589, 598-602, 97 S. Ct. 869, 876-78, 51 L.Ed.2d 64 (1977); *Fadjo v. Coon*, 633 F.2d 1172, 1175-77 (5th Cir. 1981); *DuPlantier v. United States*, 606 F.2d 654, 669-71 (5th Cir. 1979), *cert. denied*, 449 U.S. 1076, 101 S. Ct. 854, 66 L.Ed.2d 798 (1981); *Plante v. Gonzales*, 575 F.2d 1119, 1132 (5th Cir. 1978), *cert. denied*, 439 U.S. 1129, 99 S. Ct. 1047, 59 L.Ed.2d 90 (1979). The liberty interest in privacy encompasses two notions: the freedom from being required to disclose

1. Ramie argues that White and Rush waived any claim of insufficiency of the evidence by failing to move for a directed verdict at the close of all the evidence. *See Wells v. Hico Indep. School Dist.*, 736 F.2d 243, 248-49 (5th Cir. 1984), *petition for cert. filed*, 53 U.S.L.W. 3302 (U.S. October 23, 1984) (No. 84-545). The record clearly shows however, that all defendants moved for a directed verdict on the grounds that there was no evidence of a constitutional violation.

personal matters to the government and the freedom to make certain kinds of decisions without government interference. *Whalen*, 429 U.S. at 599-600, 97 S. Ct. at 876, 51 L.Ed.2d at 73. The disclosure strand of the privacy interest in turn includes the right to be free from the government disclosing private facts about its citizens and from the government inquiring into matters in which it does not have a legitimate and proper concern. *Id.* at 600-02, 97 S. Ct. at 877-78, 51 L.Ed.2d at 73. There was no evidence that either police officer or the City disclosed any information obtained during the questioning. Therefore, Ramie's claim is that the asking of the questions about her gender and religious beliefs constituted a violation of her constitutional right to privacy.

[3] Te determine whether the questioning amounted to a violation of Ramie's right to privacy, this court must decide whether the invasion of privacy proved by Ramie outweighs the government's legitimate interests. *See id.*, 97 S. Ct. at 877-78, 51 L.Ed.2d at 74; *Fadjo*, 633 F.2d at 1176. In *McNally v. Pulitzer Publishing Co.*, 532 F.2d 69, 76-77 (8th Cir.), *cert. denied*, 429 U.S. 855, 97 S. Ct. 150, 50 L.Ed.2d 131 (1976), the court stated that the constitution is violated only by invasions of privacy involving the most intimate aspects of human affairs. For example, in *Whalen*, 429 U.S. at 602, 97 S. Ct. at 878, 51 L.Ed.2d at 75, the Court held that requiring the disclosure of persons receiving medications to state health agencies did not amount to an impermissible invasion of privacy, especially where there is regular disclosure of similar information to doctors, hospital personnel, and public health agencies. Gender and religious beliefs are generally not such intimate matters and are subject to public exposure. Ramie's license, which she showed to

White and Rush, indicated her gender. Furthermore, Ramie introduced evidence at trial that she regularly attended church. Weighed against this slight invasion of privacy stands the City's legitimate interest in questioning persons suspected of committing crimes. Although in retrospect some question may be determined to be irrelevant and not within the government's proper sphere of concern, police officers must have the freedom at least to ask the questions they believe will aid them in the investigation. Because we hold that the government's interest in conducting criminal investigations outweighs any invasion of Ramie's privacy, Ramie failed to present evidence that her constitutonal rights were violated.

An undercurrent running through this case, both at trial and on appeal, is that White's and Rush's *manner* in asking the questions violated her constitutional right to privacy. Ramie, however, cites no case to support the proposition that asking otherwise proper questions in an abusive and harassing manner amounts to an unconstitutional invasion of privacy. That abusive and harassing police questioning does not violate the constitutional right to privacy does not mean that persons so treated are without legal rights. Confessions obtained through coervice tactics are, of course, inadmissible. State tort remedies may also be available.

Because we hold that Ramie failed to prove that her constitutional right to privacy was invaded, we reverse and need not reach the remaining issues raised by the City, White, and Rush. Because there was considerable confusion at trial as to what is required to establish municipal liability under section 1983, however, we address that matter briefly.

In *Monell v. Department of Social Services,* 436 U.S. 658, 98 S. Ct. 2018, 56 L.Ed.2d 611 (1978), the Court held that local governments are liable under section 1983 where official policy or governmental custom is responsible for a deprivation of rights protected by the constitution. In *Bennett v. City of Slidell,* 728 F.2d 762, 770 (5th Cir. 1984), *petition for cert. filed,* 53 U.S.L.W. 3419 (U.S. Dec. 4, 1984) (No. 84-797), this court noted that to establish liability based on the existence of a policy, *Monell* requires that the policy complained of must itself, as opposed to the way it is carried out by city employees, deprive a plaintiff of a constitutional right. *See, e.g., Monell,* 436 U.S. at 661-62, 98 S. Ct. at 2020-21, 56 L.Ed.2d at 617 (City of New York maintained policy which unconstitutionally compelled pregnant employees to take unpaid leaves of absence before required for medical reasons). The *Bennett* court also discussed municipal liability based on custom. The court stated that a section 1983 plaintiff could establish custom by proving that constitutionally objectionable behavior was sufficient in duration or frequency to the extent that it was acceded to by the maker of official policy. 728 F.2d at 766, 768.

[4] The latest writing by the Supreme Court is *City of Oklahoma City v. Tuttle,* ____U.S.____, 105 S. Ct. 2427, 85 L.Ed.2d ____ (1985). The plurality opinion authored by Justice Rehnquist would require that the damaging incident be "caused by an existing, *unconstitutional* municipal policy. . . ." ____ U.S. at ____, 105 S. Ct. at 2436 (emphasis added). Justice Brennan expressed a different view of the causal connection required between municipal policy and the constitutional deprivation: "[A] plaintiff must prove, in the broad causal

language of the statute, that a policy or custom of the city 'subjected' him, or 'caused him to be subjected' to the deprivation of constitutional rights." ____ U.S. at ____, 105 S. Ct. at 2439. However, both opinions reject the contention that a single incident of police misbehavior can establish a municipal policy or custom. Any abusive aspect of the interrogation of Ramie would not, therefore, alone prove an objectionable city policy.

To establish the City's liability, Ramie proved only her own interrogation and elicited testimony from Jones, the police chief, that it was within the police force's policy to ask suspects their gender and that, although there was no policy on discussing religion with suspects, he saw nothing wrong with White and Rush bringing up the subject. Ramie also introduced evidence of a civil rights judgment rendered against White for false imprisonment and cruel and unusual punishment.

[5] Under *City of Oklahoma City* and *Monell,* the above evidence was insufficient to establish the City's liability. Assuming that the police chief was delegated policy-making authority, there was no policy or custom attributable to him that was at all objectionable. Isolated events are not sufficient to establish custom. The tesimony of a city official might display a culpable attitude or an approval of unconstitutional conduct, but the testimony could not prove a policy by "ratification"—as has been argued here.

Because Ramie failed to introduce sufficient evidence to prove a violation of her right to privacy, the judgment is REVERSED.